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0000054871

BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

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Commissioner

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**IN THE MATTER OF LEVEL 3
COMMUNICATIONS, LLC'S PETITION FOR
ARBITRATION PURSUANT TO SECTION
252(b) OF THE COMMUNICATIONS ACT OF
1934, AS AMENDED BY THE
TELECOMMUNICATIONS ACT OF 1996,
AND THE APPLICABLE STATE LAWS FOR
RATES, TERMS, CONDITIONS OF
INTERCONNECTION WITH QWEST
CORPORATION**

DOCKET NO. T-03654A-05-0350
T-01051B-05-0350

**QWEST CORPORATION'S
COMMENTS ON THE
RECOMMENDED OPINION AND
ORDER AND LEVEL 3'S
EXCEPTIONS TO IT**

Pursuant to Arizona Administrative Code § 14-2-1505(I), Qwest Corporation ("Qwest") respectfully submits these comments concerning the Recommended Opinion and Order ("ROO") issued by the Administrative Law Judge ("ALJ") in this docket on April 7, 2006 and Level 3's exceptions to it. Level 3's exceptions are without merit. Its proposed amendments should be rejected because they are both contrary to applicable law and unsupported by the record in this proceeding.

I. INTRODUCTION

Level 3 begins its exceptions with a scare tactic designed to disguise Level 3's real strategy, which is to have Qwest bear the costs incurred to serve Level 3's Internet Service Provider ("ISP") customers while Level 3 collects the revenues from those same customers. According to Level 3, the ROO "will drastically increase Internet access rates for the 65% of Arizonans ...that still rely on dial up access to reach the Internet." (Level 3 Exceptions, p. 1).

1 This statement is pulled out of thin air. Level 3 did not make such a claim in its testimony filed
2 in this proceeding or support it in any way with evidence in the record. Indeed, Level 3
3 absolutely refuses to disclose any information concerning the revenues it receives from its ISP
4 customers or the costs it incurs to serve them, for that would reveal just how profitable Level 3's
5 business really is.

6 Stripped of its disguise, Level 3's argument is that it will be forced to charge higher rates
7 if it has to bear the costs of providing service to its ISP customers. According to Level 3, it
8 would be better if Qwest incurred the costs instead of Level 3. The FCC rejected that very
9 argument in *ISP Remand Order*¹ upon which Level 3 relies in this proceeding:

10 In sum, our goal in this order is decreased reliance by carriers upon carrier-to-
11 carrier payments and an increased reliance upon recovery of costs from end-users,
12 consistent with the tentative conclusion in the NPRM that bill and keep is the
appropriate intercarrier compensation mechanism for ISP-bound traffic. (*ISP
Remand Order* ¶ 7).

13 We believe that a bill and keep regime for ISP-bound traffic may eliminate these
14 [uneconomic] incentives and concomitant opportunity for regulatory arbitrage by
15 forcing carriers to look only to their ISP customers, rather than to other carriers,
16 for cost recovery. As a result, the rates paid by ISPs and, consequently, their
customers should better reflect the costs of service to which they subscribe.
Potential subscribers should receive more accurate price signals, and the market
should reward efficient providers. (*Id.* ¶ 74).

17 We are convinced ... that intercarrier payments for ISP-bound traffic have created
18 severe market distortions. (*Id.* ¶ 76).

19 The FCC's point is a simple one. The dial-up customer is the person who should pay the
20 costs incurred to provide dial-up service. It is not a cost that should be attributed to Qwest and
21 recovered from other customers who have not subscribed to dial-up service offered by Level 3's
22 ISP customers. As the FCC stated: "There is no public policy rationale to support a subsidy
23 running from all users of basic telephone service to those end users who employ dial-up Internet
24

25 ¹ Order on Remand and Report and Order, *In the Matter of Implementation of the Local*
26 *Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for*
ISP-Bound Traffic, 16 FCC Rcd 9151 (2001) ("ISP Remand Order")

1 access.” (*Id.* ¶ 87).

2 In its exceptions, Level 3 is asking the Commission to reverse the course the FCC has set.
3 Instead of recovering its costs from its customers, Level 3 is attempting to recover them from
4 Qwest. It does this by arguing for an expansion of the compensation regime the FCC created in
5 the *ISP Remand Order* to encompass long distance calls placed to ISPs and other types of traffic
6 such as VoIP that were never addressed in the *ISP Remand Order*. In short, what Level 3
7 describes in its exceptions as middle grounds are far from that. Level 3’s proposed amendments
8 are a blatant attempt to shift costs to Qwest and to change, for its sole benefit, the rules that other
9 carriers are required to follow.

10 II. COMMENTS

11 I. Level 3’s Proposed Changes to the ROO Concerning FX-Service Are Not Lawful 12 and Should be Rejected

13
14 In Arizona, Level 3 engages in what is known as “VNXX.” The ROO properly defines
15 VNXX as “an arrangement under which a CLEC assigns an NPA/NXX (telephone number area
16 code and prefix) to a customer that is not physically located in the rate center or exchange with
17 which that NPA/NXX is associated.” (ROO, p. 4). Level 3 employs VNXX to avoid
18 compensating Qwest for the costs that Qwest incurs. As an arbitrator in Massachusetts
19 recognized, the use of VNXX:

20
21 [W]ould artificially shield GNAPs [the CLEC] from the true cost of offering the
22 service and will give GNAPs an economic incentive to deploy as few new
23 facilities as possible. By artificially reducing the cost of offering the service,
24 GNAPs will be able to offer an artificially low price to ISPs and other customers
who experience heavy inbound calling. . . The result would be a considerable
market distortion²

25 ² *Petition of Global NAPs, Inc., Pursuant to §252(b) of the Telecommunications Act of 1996, for*
26 *arbitration to Establish an Interconnection Agreement with Verizon New England*, D.T.E. 02-45,
2002 Mass. PUC LEXIS 65, at *56 (Mass. Dep’t of Tel. and Energy, 2002).

1 The ROO also correctly recognizes that VNXX is not the same as FX service. (ROO, p.
2 30). FX service is a service in which an end user purchases service in one local calling area and
3 pays private line transport rates to transport calls from the local calling area in which it purchases
4 service to its location. (Qwest Ex. Q-1, Brotherson Direct, p. 50). With FX service, the end user
5 pays for origination of calls by purchasing local exchange service in the originating exchange
6 and pays for the transport and termination of the calls to its location. Thus, the FX end user
7 assumes responsibility for all of the costs of carrying, switching and transporting traffic it
8 receives.

9 In its exceptions, Level 3 acknowledges that "Qwest is legitimately concerned that it is
10 not subject to unreasonable costs in delivering ISP-bound calls to Level 3." (Level 3 Exceptions,
11 p. 8). But then, directly contrary to that correct concession, Level 3 turns around and proposes a
12 definition of "FX-like" traffic that is not correct and that would in fact shift the overwhelming
13 majority of the costs back onto Qwest. Under Level 3's definition of "FX-like" traffic, neither
14 Level 3 nor its ISP customer would pay Qwest for the cost of service in the originating exchange.
15 Nor would they pay for the termination of the traffic since under Level 3's new proposed
16 language, it would charge Qwest for termination.

17 Level 3's proposed definition of "FX-like" is just a back door attempt to rename VNXX
18 as FX service and to circumvent the ROO's prohibition of VNXX. The service Level 3 offers is
19 not FX service; it is VNXX pure and simple. Likewise, what Level 3 proposes to define as FX-
20 like traffic is just VNXX traffic by another name. The Commission should reject Level 3's
21 subterfuge. Level 3's proposed amendments relating to "FX-like" traffic should be rejected.

22
23 **II. The ROO Properly Reflects the Law Regarding VoIP and Should Not Be Modified**
24 **as Level 3 Proposes**

25
26 The parties agree that true VoIP is an enhanced service. Under federal law, enhanced

1 service providers are treated as end users for purposes of applying access charges.³ The FCC has
2 “defined them as ‘end users’ – no different from a local pizzeria or barber shop.”⁴ Thus, the
3 ROO correctly finds that “the VoIP provider’s POP is the appropriate point to determine the
4 endpoint of the call.” (ROO, p. 37). The ROO further notes that all it is doing is “retaining the
5 existing intercarrier regime.” The ROO is thus consistent with FCC’s statement, in its *IP-*
6 *Enabled Services NPRM*,⁵ that, “As a policy matter, we believe that any service provider that
7 sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of
8 whether the traffic originates on the PSTN, on an IP network, or on a cable network. We
9 maintain that the costs of the PSTN should be borne equitably among those that use it in similar
10 ways.” Level 3’s proposals would, inconsistent with the foregoing stated of FCC policy, allow it
11 special treatment.

12 Level 3 argues that the FCC changed the ESP exemption rules in its rulings on ISP-bound
13 traffic. However, none of the authorities Level 3 relies upon even address VoIP or the
14 applicability of access charges. Furthermore, Level 3 is just plain wrong. The *ISP Remand*
15 *Order* itself recognizes that enhanced service providers are treated as end users for the purposes
16 of applying access charges.⁶

17 In its exceptions, Level 3 proposes for the first time a type of traffic it calls “FX-like
18 traffic to or from VoIP providers.” (Level 3 Exceptions, p. 15). The Commission should reject
19 this Proposed Amendment for two reasons. First, as discussed above, this is just another thinly
20 disguised attempt to circumvent the ROO’s VNXX prohibition. (ROO, p. 37). Second, this is a
21 completely new proposal that Level 3 did not raise in its petition. Section 252(b)(4)(A) of the

22
23 ³ “Under our present rules, enhanced service providers are treated as end users for purposes of
24 applying access charges.” *Northwestern Bell Telephone Company Petition for a Declaratory*
Ruling, Memorandum Opinion and Order, 2 FCC Rcd 5986, 5988, ¶20 (1987).

25 ⁴ *ACS of Anchorage v. FCC*, 290 F.3d 403, 409 (DC Cir. 2002).

26 ⁵ Notice of Proposed Rulemaking, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36,
FCC 04-28 ¶ 61 (2004)

⁶ *ISP Remand Order* ¶ 11.

1 Act prohibits the Commission from even considering it. 47 U.S.C. § 252(b)(4)(A).

2
3 **III. Level 3 Should Not Be Permitted to Deliver Switched Access Traffic over LIS**
4 **Trunks**

5
6 Level 3 seeks to receive its interexchange traffic from Qwest callers over the same local
7 interconnection trunks that are used for the exchange of local traffic between Qwest and Level 3.
8 Level 3 ignores the method by which long distance carriers obtain access to Qwest's local
9 exchange. That method is an access capability providing for switched access, called Feature
10 Group D. Feature Group D and other interconnection products providing long distance carriers
11 switched access to the local exchange have been the exclusive means of switched
12 interconnection access available to long distance carriers for decades. Level 3, however, seeks
13 to send interexchange traffic (or switched access traffic as it is referred to in Qwest's proposed
14 language) over LIS (local interconnection service) trunks. LIS trunks do not have the capability
15 to record switched access traffic. Thus, if Level 3's position is adopted, Qwest will not be able
16 to provide switched access records to independent LECs and CLECs for traffic that Level 3
17 originates so that they can bill Level 3. Level 3 offered no solution to this problem.

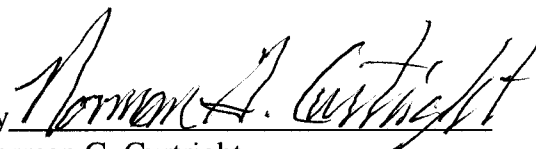
18 In its exceptions, Level 3 has misrepresented to the Commission that Qwest's SGAT
19 permits all traffic types to be sent over LIS trunks. To support this erroneous claim, Level 3 cites
20 to Section 7.2.2.9.3.2 of the SGAT. However, Section 7.2.2.9.3.2 does not even use the word
21 "LIS." The Section of the SGAT that lists the types of traffic that can be sent over LIS trunks is
22 Section 7.2.2.9.3.1 and Switched Access traffic is not one of the permitted traffic types.

23 It is absolutely clear that Level 3 does not want Qwest to have the ability to record
24 switched access traffic. Disabling Qwest's ability to record switched access traffic gives Level 3
25 a way to avoid access charges without getting caught. The Commission should reject Level 3's
26 proposed amendment language.

1
2
3 **III. CONCLUSION**

4 For the foregoing reasons, Level 3's exceptions and proposed amendments to the ROO
5 are without merit and should be rejected.

6 RESPECTFULLY SUBMITTED this 16th day of June, 2006.

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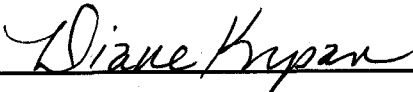
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